

Cyngor Sir *Powys* County Council

Supporting Working Parents Policy

A guide to Maternity, Paternity & Adoption Entitlements

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Cyngor Sir Powys County Council
Supporting Working Parents Policy

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Cyngor Sir Powys County Council Supporting Working Parents Policy

1. Introduction

- 1.1 This policy explains the rights and responsibilities of employees who are entitled to maternity, paternity, adoption and parental leave. Employees are advised to ensure that they have read this policy prior to commencing such leave, and as necessary, to contact their manager or Human Resources, for any further advice and clarification required. ***Further details about how to access external information resources and advice are also provided at the end of this document.***
- 1.2 This policy applies in cases of births or adoptions due on or after 1st April 2007 and takes into account the statutory rights as set out in the Work and Families Act 2006 and other UK legislation.

2. Scope

- 2.1 This policy applies to all Council employees. There is a separate policy for School based employees. The rights and responsibilities outlined form part of the employment contract and the Council may amend them at any time following due consultation where appropriate.

3. Definitions of Terms

The leave and pay arrangements described within this policy refer to a number of abbreviations and terms. These terms are those used within the statutory framework concerning parental rights which all employers follow and therefore the Council is required to use this terminology. The most common ones are described below:

EWC

Expected Week of Childbirth (EWC) This is the date during the week (commencing on Sunday) given by a Registered Medical Practitioner/Registered Midwife which indicates when the baby is expected, or when an adoption agency indicates when the child is to be placed in cases of adoption.

Qualifying Week (QW)

This is the 15th week *before* the EWC and influences eligibility to pay and leave under this policy.

MAT B1 / Matching Certificate

The name of the Maternity Certificate given by a Registered Medical Practitioner/Registered Midwife during pregnancy, indicating the EWC. In cases of adoption, an equivalent document is referred to as the Matching Certificate and is issued by the adoption agency.

OML/OAL

Ordinary Maternity Leave/ Ordinary Adoption Leave – the core period which covers the first 26 weeks of maternity/adoption leave during which full terms and conditions of employment apply except those relating to remuneration. The right to remuneration is replaced by the right to receive the appropriate level of Maternity Pay.

AML/AAL

Additional Maternity Leave/Additional Adoption Leave – an additional period of leave of up to 26 weeks immediately following OML.

OPL

Ordinary Paternity Leave – Up to two weeks' leave may be taken with full pay.

APL

Additional Paternity Leave – Up to 26 weeks, as outlined in section 15.

OMP/OAP

Occupational Maternity Pay / Occupational Adoption Pay - the element of pay that the Council makes provision for over and above the statutory minimum; it is subject to at least 1 year's continuous service in local government at the 11th week before the EWC.

SMP/SAP

Statutory Maternity Pay / Statutory Adoption Pay. This is the element of pay that the Council must pay qualifying employees as a statutory minimum.

OSPP

Ordinary Statutory Paternity Pay. This is the element of pay that the Council must pay qualifying employees as a statutory minimum.

ASPP

Additional Statutory Paternity Pay. This is the element of pay that the Council makes provision for over and above ordinary statutory paternity pay.

4. Maternity Leave

- 4.1 The right to maternity leave has no continuous service requirements and employees are entitled to take up to 26 weeks of Ordinary Maternity Leave (OML) and up to 26 weeks of Additional Maternity Leave (AML).

- 4.2 By the time the employee has reached the Qualifying Week (15th week before EWC), she must inform her line manager and the Employment Services Section within HR:
- that she is pregnant;
 - the date of the Expected Week of Childbirth (EWC), and provide the Maternity Certificate (form MAT B1) from a registered medical practitioner or registered midwife stating the EWC date;
 - the date she intends to commence maternity leave (which must be no earlier than the 11th week before the EWC);
 - the date she intends to return to work and whether this includes any AML.
- 4.3 Employees may begin maternity leave at any time between eleven weeks before the EWC and the actual EWC, unless exceptional circumstances prevail, for example, your child is born prematurely.
- 4.4 An employee may change the date they wish to start their leave, by notifying the Council at least 28 days before their maternity leave commences, unless this is not reasonably practicable.
- 4.5 Compulsory maternity leave: all employees must take a minimum of two weeks' maternity leave starting with the day on which childbirth occurs.

5 Adoption Leave

- 5.1 An adopter is a person who has been matched with a child for adoption by an adoption agency. In the case where two people (including same sex partnerships) have been matched jointly, the adopter is whichever of them has opted to be the child's adopter for the purpose of taking statutory adoption leave. The other partner may qualify to take Partner Leave – see Sections 14 and 15.
- 5.2 The adopter who has opted to be the child's adopter for the purpose of taking statutory adoption leave is entitled to the same provisions as laid out in the maternity provisions which are detailed above in Section 4. Entitlements to adoption leave are applicable for a newly-matched child (up to the age of 18 years) placed with adoptive parents. A parent who is not the main carer of the adopted child may qualify to take up to two weeks' paid Partner Leave – see Section 14. Statutory adoption leave and partner leave are subject to demonstration of eligibility by provision of the matching certificate.
- 5.3 Paid Leave should be granted to allow adopters to fulfil the requirements of the formal adoption procedure e.g. counselling, screening, interviews, meeting the child etc. and also at the time when the child comes under the full-time care of the adoptive parent. This provision is the same as the reasonable time that would have been given for pre-natal appointments.
- 5.4 Adoption leave is not available in cases where a child is not newly matched for adoption, such as where a step-parent is adopting a partner's children.

6 Eligibility for Maternity/Adoption Pay

- 6.1 Eligibility for maternity pay is subject to a period of continuous Local Government Service.
- 6.2 Eligibility for SMP is subject to the employee (a) having continuous Local Government Service for at least 26 weeks by the end of the 15th week (Qualifying Week/QW) before the Expected Week of Childbirth (EWC) and (b) having an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions.

For example:

If the baby is due in the week commencing 25th November 2011(EWC), then the Qualifying Week (QW) will be the week commencing 12th August 2011, and the employee must have commenced employment with the Council at least 26 weeks before that, i.e., by the week commencing 11th February 2011 (26 weeks before the QW).

- 6.3 Employees who have more than 1 year's continuous Local Government service at the end of the 11th week before the EWC are eligible for OMP as well as SMP.

- 6.4 Maternity pay is normally paid as follows:

a) Less than 26 weeks of continuous Local Government service before the end of the QW:

May be entitled to Maternity Allowance paid by the Benefits Agency, for up to 39 weeks, but no pay from Powys County Council. To qualify, employees must have been employed or self-employed for 26 weeks out of the 66 weeks before the expected week of childbirth. Such employees are advised to seek advice from Job Centre Plus regarding Maternity Allowance.

b) At least 26 weeks but less than one year of continuous Local Government service before the QW:

39 weeks SMP paid made up of:

6 weeks @ 90% of average weekly earnings (being the weekly average earnings calculated over 8 weeks before the QW (the Relevant Period)) as set out in section 6.5 below;

Followed by 33 weeks @ SMP rate or 90% of average weekly earnings as set out in section 6.5 below (whichever is lower);

c) At least 1 year of continuous Local Government service, *but not returning* after maternity leave:

39 weeks SMP paid made up of:

6 weeks @ 90% of average weekly earnings as set out in section 6.5 below;
Followed by 33 weeks @ SMP rate or 90% of average weekly earnings (whichever is lower)

d) At least 1 year of continuous Local Government service and returning after maternity leave:

39 OMP weeks paid made up of:

6 weeks @ 90% of average weekly earnings as set out in section 6.5 below;
Followed by 12 weeks @ half pay plus SMP (not exceeding full pay);
Followed by 21 weeks @ SMP rate

6.5 Maternity/Adoption Pay will be calculated using the average weekly earnings rules as detailed above used for calculating SMP entitlements, subject to the following qualifications:

(i) In the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire SMP calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

(ii) In the event of a pay award or annual increment being implemented during the paid maternity leave period, you will be treated for SMP purposes as if the pay rise had applied for the Relevant Period. This means that your SMP will be recalculated and increased retrospectively, or that you may qualify for SMP if you did not previously qualify.

(iii) in the case of an employee on unpaid sickness absence or on sickness absence attracting half pay during the whole or part of the Relevant Period, average weekly earnings for that period shall be calculated on the basis of sick pay.

6.6 Employees who qualify for OMP may opt to have these payments spread over a longer time period, or have the OMP amount paid to them in full on return to work. Any such payments must be agreed between the employee and the Council.

6.7 An employee who states their intention to return to work and then does not do so, or returns for a period of less than 3 months after their maternity/adoption leave shall, in normal circumstances, refund their OMP, as per 6.4(d), to the Council.

7. Confirming Maternity Leave and Pay

7.1 Employment Services will write to the employee, as soon as the MAT B1 form and MAT 1A application form are received, to confirm the following:

- The level of paid and unpaid leave entitlements;

- Unless an earlier return date has been given, confirmation of the expected return date based on 52 weeks paid and unpaid leave entitlement;
- The length of any period of accrued annual leave which it has been agreed may be taken either side of the maternity leave period; and
- The requirement for the employee to give at least 8 weeks' notice if they wish to return to work before the expected return date.

8. Keeping in Touch (KIT)

8.1 Before going on leave, the line manager and the employee must also discuss and agree any arrangements for keeping in touch during maternity leave including:

- any arrangements (in person or by correspondence) that may be helpful to keep in touch with developments at work and, nearer the time of return, to help facilitate a return to work;
- keeping the manager in touch with any developments that may affect the employee's intended date of return.

8.2 Contact may be achieved by attending work for up to ten 'Keeping in Touch' (KIT) days during maternity / adoption leave (save that you must not work in the two weeks following birth), which may be utilised by mutual agreement. These days are optional and may be taken to attend particular events such as training days or team meetings, or to assist with a phased return to work at the end of maternity leave.

8.3 Any work that is done by an employee as part of a Keeping in Touch (KIT) day, even if it is as little as an hour, counts as one KIT day from the allocation of ten. KIT days may be taken as single days, in blocks, or all at once. It is important to note that one hour worked counts as a full KIT day as part of the ten KIT day allowance; however, for the purposes of pay, the employee will only be paid for the hours they actually work.

8.4 Time attended for a KIT day will be paid to the employee up to a full day's pay, including any Maternity Pay, noting the provisions of 8.3 above.

9. Returning To Work

9.1 An employee who has stated that they intend to return to work after their maternity leave and does not then subsequently return to work, or returns for less than a period of 3 months, shall refund to the council the OMP element of any maternity / adoption pay paid (i.e. equivalent to 12 weeks of half-pay). However, consideration will be given to individual circumstances such as where this will cause considerable hardship. Returning to work with the Council is not a pre-requisite to receiving SMP.

9.2 If the employee intends to return to work at the end of their full maternity/adoption leave they will not be required to give any further notification to their manager (as this date will have been given when they notified their manager at 15 weeks before EWC (see section 4.2) although if they wish to return early they must give at least 8 weeks' notice.

9.2 There are certain obligations placed on the Council concerning care for new mothers returning to work. These obligations include the provision of a safe working environment taking into consideration the needs of the new mother, and the provision of suitable facilities for breastfeeding and/or expressing milk. *(See the Health and Safety information in Section 12 and the information contained in Section 13.6 regarding post-natal care and breastfeeding).*

10. Returning on Flexible Working Arrangements

10.1 The employee is normally entitled to return to the same position she held before commencing leave. However, if the employee has taken any period of AML or more than four weeks' parental leave, and it is not reasonably practicable for the Council to allow a return into the same position, the Council may identify a suitable alternative job on terms and conditions that are not less favourable.

10.2 If, at the end of maternity leave, an employee wishes to return to work with a different working pattern, the Council will on a case by case basis consider this as far as is reasonably practicable. If this is not possible the Council must provide written, objectively justifiable reasons for the refusal.

10.3 The Council's [Flexible Working Policy](#) sets out the flexible working options that are available to employees, describes the legal rights for working parents, the Council's obligations towards employees, and explains the procedure for making a formal request for flexible working. Employees should refer to this policy before considering making a request for flexible working.

11. Further Information:

11.1 Sickness Prior to Childbirth

11.1.1 If an employee takes sick leave due to a pregnancy related illness during the last four weeks before the Expected Week of Childbirth (EWC), maternity leave will commence on the day after the first full day of sickness absence. Absence prior to the last four weeks before the EWC, supported by a Doctor's Note, or a self-certificate, shall be treated as sick leave in accordance with normal sick leave provisions but if pregnancy-related shall be disregarded in any future employment-related decisions.

11.2 Sickness following Maternity / Adoption Leave

11.2.1 In the event of illness following the date the employee was due to return to work, normal sick leave provisions will apply.

11.2.2 The Council will, however, be sensitive to the needs of new parents and provide reasonable support including access to the Occupational Health Service for those experiencing post-natal conditions and symptoms such as post-natal depression.

11.3 Premature Birth

If the baby is born before the EWC but nevertheless after the maternity leave has started, leave and pay continues as agreed. If the baby is born before maternity leave has commenced but after the 15th Week before EWC, maternity leave and pay commences the day after the birth. Where the baby is born before the 15th week before the EWC, maternity leave and pay commences as above. Maternity Pay is based on the average earnings over the 8 weeks ending on the Saturday before the birth.

11.4 Still Birth

Where the baby is still-born after the 24th week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if the baby had been born alive and support will be offered to the employee by way of access to the Council's Occupational Health Service and Counselling Service.

11.5 Miscarriage

In cases of miscarriage before the 24th week of pregnancy, the Council's usual sick leave provisions will apply, and support will be offered to the employee by way of access to the Council's Occupational Health Service and Counselling Service.

12. Health and Safety for Employees Pre and Post Birth

- 12.1 Where an employee is pregnant, has recently given birth or is breast feeding, the line manager should carry out a risk assessment of the employee's working conditions. Health & Safety legislation requires employers to carry out a specific risk assessment where women of child-bearing age or new or expectant mothers may be at risk from a work process, working condition or physical, biological or chemical agent.
- 12.2 In the best interests of the expectant employee, action will be taken in instances of Rubella (German Measles) which could include transferring the employee to another work location. Where risks are identified, employees may not be obliged to continue that work. Every effort will be made to alter the working conditions for that person wherever possible.
- 12.3 If it is found, or a medical practitioner considers, that the employee or their child would be at risk if the employee were to continue with their normal duties, the manager should provide suitable alternative work for which they will receive their normal rate of pay. Where it is not reasonable to offer suitable alternative work the employee will not be required to work but will be on full pay for as long as the risk exists to safeguard their well-being. If the situation remains the same by the start of the 4th week before the Expected Week of Childbirth, maternity leave will automatically begin.
- 12.4 In all cases, guidance and advice is available from Occupational Health & Safety and the Human Resources Department.

13. Additional Provisions:

13.1 Contractual rights

During maternity leave employees retain all of their contractual rights except remuneration. This is replaced by maternity pay (subject to eligibility). In terms of lease vehicles, the Council will continue to pay their contribution only for the first 26 weeks of maternity leave. The employee will have to meet the full leasing costs for any period of maternity leave after 26 weeks. The employee will be contacted by Employment Services prior to any deductions being made. Deductions will not be made from statutory payments; so in most cases, the deductions will be made when the employee returns to work.

13.2 Increments

Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

13.3 Pensions

Pension rights and contributions shall be dealt with in accordance with the provisions of the Local Government Pension Scheme. Employees are advised to seek advice from the Council's Pensions Service regarding pension contributions during maternity leave.

13.4 Antenatal Care and Preparing for Adoption

Pregnant employees have the right to reasonable paid time off for antenatal care. Antenatal care may include relaxation and parent-craft classes as well as appointments for antenatal care. Time off for prospective adoptive parents is also available in the same manner. Employees should give the Council as much notice as possible of such appointments.

13.5 Organisational Changes and Consultation

13.5.1 The Council will ensure that due consultation takes place in instances of organisational change. Where there is re-organisation during a period of maternity/ paternity/ adoption leave, provisions will be made to ensure employees are sent details of any proposed changes and specific provisions may need to be considered to accommodate the employee not being able to engage in consultation in the normal way.

13.5.2 Subject to 10.1 above, an employee on maternity/ paternity/ adoption leave has the right to return to their job under their original contract and on no less favourable terms and conditions. Should there be proposals to make the employees substantive post redundant the employee would be entitled to prior consideration for any suitable vacancies that exist in the organisation.

13.6 Post-natal Care and Breastfeeding Mothers

Employers are required to provide breast-feeding women with suitable rest facilities. The Health and Safety Executive also encourages employers to provide a healthy and safe environment for women who are breast-feeding with suitable access to a private room to express and store milk. The manager and the employee must discuss individual needs and arrange for adequate facilities to be made available. Advice and guidance is available from the Occupational Health & Safety Service and Human Resources.

13.7 Annual Leave

13.7.1 The Employment Rights Act 1996 provides that a woman is entitled to all her terms and conditions during both OML and AML, apart from remuneration, as though she was at work. In the case of employees employed under the Green Book, this means that as well as contractual annual leave a woman will be given a day's additional leave for each public or bank holiday that falls during the OML and AML periods (Pro-rated to contractual hours).

13.7.2 Employees taking additional paternity or adoption leave will accrue annual leave for the period of their leave.

13.7.3 Employees who are planning to commence maternity/ paternity/ adoption leave will need to have discussions with their line manager about any untaken annual leave they have accrued prior to their maternity/ paternity/ adoption leave commencing. It would be reasonable for a manager to allow an employee to take untaken annual leave on odd days to allow them to work part-time prior to maternity leave commencing, for example. Arrangements will need to take into account service specific needs and therefore employees due to commence maternity/ paternity/ adoption leave may be asked to take all accrued annual leave before their maternity / paternity/ adoption leave commences.

13.7.4 Employees are entitled to carry forward annual leave and public/bank holidays accrued from one leave year to the next when they are unable to take it due to being on maternity/ paternity/ adoption leave. However, discussions will need to be had between the line manager and the employee prior to their return to agree how accrued annual leave will be taken. It may be reasonable for the continuity of service provision for managers to inform the employee they must take all accrued annual leave prior to returning to work. Equally, it would be reasonable for managers to allow an employee to take accrued annual leave a few days a week in the few weeks following maternity/ paternity/ adoption leave to allow a phased return back to work.

14. Ordinary Paternity/Partner Leave and Pay (includes Adoption)

14.1 Ordinary Paternity/Partner Leave (OPL) is available to employees who are biological or adoptive fathers or same sex partners who are fully involved in the upbringing of the child and are taking this time off to support their partner taking maternity leave and the new child. They must have been in employment with the Council for at least 26 weeks before the 15th week before the Expected Week of Childbirth and have

informed the Council of their intention to take the leave by this date as far as is reasonably practicable.

- 14.2 The entitlement is to two weeks' paternity leave with paternity pay. This will be paid at full pay. Full pay will be calculated on the basis of the average weekly earnings rules used for calculating maternity pay entitlements. One period of Paternity Leave is available when there is a multiple birth.
- 14.3 Leave should be taken as one week or two weeks in a continuous block and agreed between the employee and their manager. The leave may not be taken as two separate weeks, nor as odd days and the leave must be taken within 56 days of the birth/adoption.
- 14.4 Employees who wish to take OPL are required to write to their line manager to make their request at least 28 days before they want the leave to start, unless there are exceptional circumstances.
- 14.5 Reasonable paid time off for attending ante natal classes with the partner taking maternity leave should also be granted.

15 Additional Paternity/Partner) Leave and Pay (Includes Adoption)

- 15.1 Additional Paternity/Partner Leave (APL) allows employees who are eligible (see 14.1) to take up to 26 weeks' leave to care for their new baby/ child.
- 15.2 Additional paternity leave is for a maximum of 26 weeks and can be taken from 20 weeks after the child is born but must finish by the child's first birthday. In the case of adoption, it can start anytime between 20 weeks and 52 weeks after the child starts living with the adopter.
- 15.3 To qualify for additional paternity leave and pay, the Council needs to receive notice in writing from the employee at least 8 weeks before the start of the leave. This notice must include the expected date of the baby's birth or date notified of being matched for adoption, the actual date of the birth date, matching date or placement of adoption, the start date of the APL and pay, as well as the employee's relationship to the mother and that the leave is being taken to care for the child. The employee must complete declaration form SC7.
- 15.4 For APL to be taken the child's mother or adopter must have returned to work – periods of annual leave, sick leave or parental leave which directly follows maternity or adoption leave does not count as a return to work.
- 15.5 Additional Paternity/Partner Leave attracts a payment of Statutory Paternity Pay (ASPP) which is paid at either the statutory amount (revised annually) or 90% of the employee's average weekly earnings, whichever is the lower.
- 15.6 As noted earlier in section 8, employees can choose to work for the Council for up to 10 days (maternity and paternity entitlement combined to a maximum of 10 days per couple) as Keeping in Touch (KIT) days without losing their entitlement to ASPP.

15.7 For employees who do not meet the eligibility criteria for Paternity/Partner Leave (described in paragraph 14.1 above), but are in a position of providing primary and/or sole support to a new parent at or around the time of birth, Maternity Support Leave may be available. This leave may only be granted when there is **no other** individual taking Paternity/Partner leave in relation to the same child.

16. Maternity Support Leave

16.1 Maternity Support Leave is only for those employees who are the main support for a mother who has recently given birth or a main carer, where there is no biological father/ partner to give the support.

16.2 It is a prerequisite of Maternity Support Leave being considered that the mother writes to the line manager of the nominated Council employee who wishes to take the leave, and declares that there is no father/ partner who will be taking Paternity /Partner Leave in connection with that birth/adoption. The nominated employee requesting to take Maternity Support Leave will also be required to provide a copy of the MAT B1 form from the mother.

16.3 Maternity support leave may be granted for a period of 1 week with pay. Leave must be taken in one block within 56 days of the birth.

17. Leave for Foster Parents

17.1 As a provider of Social Services, the Council recognises the need to encourage and support employees whose assessment for suitability to become foster parents is being undertaken by a Local Authority.

17.2 Employees should be aware, however, that although there is currently no statutory provision to support potential foster parents with paid time off, in cases where employees decide to become foster parents and are undergoing the approval process, reasonable paid time off should be granted to attend meetings and training in the same way that expectant parents have access to ante natal appointments.

17.3 Employees who are potential foster parents should also be encouraged to consult the Flexible Working Policy for guidance on the range of flexible working options available that will support the achievement of a more satisfactory work-life balance if required.

18. Parental Leave

18.1 Working parents – mothers, fathers, adoptive parents and anyone else who has, or expects to have, parental responsibility for a child – have a statutory right to take up to 13 weeks of unpaid leave during their child's first five years or up to the age of 18 if a child has a disability. The Council extends this age limit for a further 12 months, up to the child's 6th birthday. The right applies in respect of each child: an employee with two children would be entitled to 26 weeks in total. Leave should be taken in blocks of 1 week at a time and therefore any days taken will be classed as one of the 13 unpaid periods available. Parental leave gives another option for working parents

needing time off to spend with their children, and further guidance on other flexible working arrangements that may be considered are contained in the Flexible Working Policy.

19. Other Sources of Information for Working Parents

Information on **Statutory Maternity Pay and Maternity Allowance** entitlements is contained in the following Department for Work and Pensions (DWP) booklet:

A Guide to Maternity Benefits (NI17A) - copies of this booklet can be obtained from:
<http://www.dwp.gov.uk/advisers/ni17a>

Information and guidance on **Maternity Allowance** is available from JobCentre Plus on 08000556688.

Further information for **new and expectant mothers at work** is available on the Health and Safety Executive website at: www.hse.gov.uk/mothers/index.htm

For a comprehensive resource on everything to do with **work-life balance**, visit:
<http://www.workingfamilies.org.uk>.

ACAS (Advisory, Conciliation and Arbitration Service) provides advice to individuals and employers on a range of **employment matters** via its helpline on 08457 474747 or visit: www.acas.gov.uk

More information on Ordinary and Additional Statutory Paternity Pay can be found in the Helpbook E19 (2011) published by HM Revenue and Customs.

The Council's **Flexible Working Policy** is available by visiting the Human Resources Intranet site, page 6065. If you have questions that are not covered by the Flexible Working Policy please contact the HR Adviser for your department.

APPENDIX 1

FREQUENTLY ASKED QUESTIONS

1. As SMP is payable for 39 weeks, does this mean that OML is 39 weeks?

No, OML and AML remain at 26 weeks each. Women are now entitled to the same benefits during additional maternity leave as they receive during ordinary maternity leave. (For employees employed under Green Book terms and conditions).

2. What are the implications of keeping in touch (KIT) days? Is an employee paid for working on a KIT day?

The maternity leave regulations have been amended to provide that a woman can do up to 10 days' work during her maternity leave (save for the first two weeks following birth) without bringing her maternity leave to an end (KIT days). Working for part of a day will count as one day. The SMP regulations have also been amended to provide that a woman will not lose any SMP for working for up to 10 days. A woman will lose her SMP for any week in which she does any further work beyond the 10 day limit.

Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.

This provision is designed to facilitate an employee working during this period. An employer cannot insist that an employee carries out any work during maternity/ paternity/ adoption leave and they are protected from suffering a detriment or being dismissed for refusing to do so. Equally, an employee cannot insist on being given any work to do.

Whether and what an employee should be paid for any work that they do during these 10 days is a matter for agreement between the employee and their manager in accordance with the authority's policy – currently, PCC pays for KIT days, as per sections 8.3 and 8.4 above. A woman will continue to receive her SMP (and occupational maternity pay (OMP)) for the week in which she works. However, in most cases a woman should be paid for any work she does under the contract. Issues to take into account will include the nature of the work and its duration. It is open to an employer to offset the SMP and/or OMP for the period worked against any pay due. These matters should be discussed and clearly agreed before any work is undertaken.

Note that an employee cannot carry out any work during the first two weeks following the birth of the child. It is an offence to permit an employee to work during this period (known as the compulsory maternity leave period) and the employer may incur a fine.

3. Does annual leave continue to accrue during maternity leave?

A. The Employment Rights Act 1996 provides that a woman is entitled to all her terms and conditions during both OML and AML, apart from remuneration, as though she was at work,

so she must accrue her leave, including bank holidays, throughout the whole of the maternity leave period.

4. Do we have to give a woman a substitute day's leave for bank holidays that fall during maternity leave?

The Employment Rights Act 1996 provides that a woman is entitled to all her terms and conditions during both OML and AML, apart from remuneration, as though she was at work. In the case of employees employed under the Green Book, this means that as well as contractual annual leave a woman will be given a day's additional leave for each public or bank holiday that falls during the OML and AML periods (Pro-rated to contractual hours).

5. Should an employee on additional paternity or adoption leave continue to accrue their annual leave?

The adoption framework and additional paternity leave scheme reflects the maternity scheme. During ordinary and additional adoption leave and additional paternity leave an employee is entitled to all their terms and conditions, apart from remuneration, as though they are at work. They will therefore be able to accrue annual leave and bank holidays during this period.

6. One of our employees is pregnant. We also employ her mother and partner/husband. The mother has requested maternity support leave and the father has given notice that he intends to take statutory paternity leave. Are they both entitled to leave?

A. The purpose of maternity support leave is to allow an employee leave where they are the main support for the mother and/or carer of the child. If the Council knows that the father intends to take his entitlement to statutory paternity leave (SPL) then there will be no need for a 'nominated carer'. The mother will therefore not be eligible for MSL.

7. An employee gave birth on Tuesday, before she had originally planned to start her maternity leave. When does her maternity leave start?

Where a woman has not already commenced maternity leave when she gives birth, maternity leave will start on the day following the birth, in this case on the Wednesday. If the employee is entitled, SMP or OMP will also start on the following day (Wednesday) and will run for the full 39 weeks.

8. If an employee is off work sick with a pregnancy-related condition when does her maternity leave start?

A. A woman's maternity leave can only be triggered by pregnancy-related absence from the beginning of the 4th week before the expected week of childbirth. If a woman is off sick with a pregnancy-related illness during this period then her maternity leave will start on the day following the first day on which she was absent. Her SMP/ OMP will also start on this day and run for the full 39 weeks.

For example, if a woman became sick for a pregnancy related reason on a Sunday and was off work on the Monday, her maternity leave and pay would begin on the Tuesday.

9. Do we have to continue to provide childcare vouchers during maternity leave?

The Employment Rights Act 1996 provides that a woman is entitled to the benefit of all her terms and conditions during OML and AML, apart from remuneration, as though she was at work. Remuneration is defined as wages or salary.

Childcare vouchers may be provided as part of a salary sacrifice scheme, where an employee has agreed under a variation to contract to reduce their salary entitlement and receive childcare vouchers instead, or they may be provided on top of existing salary. In both cases, they will not be classed as wages or salary and should therefore be provided on top of any SMP or OMP payable.

Neither SMP nor OMP should be reduced to take account of the fact that childcare vouchers are also being provided. It should be remembered that in the case of salary sacrifice arrangements the employee's SMP and OMP will already be based on the reduced pay.

Childcare vouchers are a non-cash benefit and can only be used by that employee (and so are non-transferable). Childcare vouchers therefore must continue to be paid in any period during which the employee receives no maternity pay, e.g. in the last 13 weeks of additional maternity leave.

HMRC guidance on salary sacrifice schemes and maternity leave is available at <http://www.hmrc.gov.uk/employers/sml-salary-sacrifice.pdf>.

APPENDIX 2

APPLICATION FOR MATERNITY SUPPORT LEAVE

Requests for this leave should be made on this form by employees and should be countersigned by the mother.

A copy of the mother's MAT B1 form is also required with the submission of this form.

Name (in full):		
Directorate:		
Location:		
Job Title:		
Payroll No: (As per last pay slip)		
Dates Leave Requested For:	From:	To:
Signed (Member of staff)		
<p>In signing this form I _____ (mothers name) nominate the employee named above as my nominated carer for Maternity Support Leave, as set out above.</p> <p>In signing this form I _____ (applicant employee) certify that I will be the primary provider of support to the mother at or around the time of the birth of the child and confirm that no other Powys County Council employee has taken Maternity Support Leave or Paternity Leave in respect of this birth.</p>		
Mother's Name:		
Mother's Address:		
Date of Birth of Child:		
Place of Birth:		
Signature (Mother):		
Signature - Approved Head of Service/ Headteacher):		